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Lothar Ginzel

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EXAMINER

O BRIEN, JEFFREY D

ART UNIT

PAPER NUMBER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Response to Arguments***

1. Applicant's arguments filed 5/26/2009 have been considered but they are not persuasive.
2. Regarding Claim 18, Applicant argues that there is no reasonable expectation of success that the combination of '468 and '092 will arrive at the claimed invention. Specifically, Applicant argues that the two references teach two different closer mechanisms (cam and tooth rack). '092 is merely a teaching reference and teaches modifying an embodiment having a liquid medium (Fig. 1) with a pump (Fig. 7) to allow for motorized operation of the system. '468 discloses a closer having a liquid medium (oil). There would have been a reasonable expectation of success to modify the closer with a pump to move oil from one side of a piston member to the other in order to allow for motorized operation. Applicant further argues that '092 requires a lower closing force and therefore the pump of '092 would not be capable of operating the closer of '468, however these force limitations are not specifically claimed by Applicant and further, it has been held that the test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art. *In re Bozek*, 163 USPQ 545 (CCPA 1969). It would therefore be obvious to apply an appropriately powerful pump for the specific force needed for the situation. It is further noted that this would vary depending on the door type and load and that one of ordinary skill in the art would know to apply an appropriate amount of force for the door type.

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3. Applicant further argues that additional modification would be required to rearrange the first spring so as to be orthogonal to the longitudinal housing direction. The first spring of '468 applies a force to the blocking member (28) which applies force to a roller (26) which rolls against the shaft (13). The spring, blocking member, and roller would maintain the same function by rearranging the parts to be located orthogonally to the longitudinal direction of the housing. It is maintained that these parts would merely be rearranged and would provide the same function as per the original disclosure of '468. Applicant appears to further argue the incorporation of elements of '092 in the closing device of '468, it is reiterated that '092 is a teaching reference and that the test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art.
4. Applicant further argues that the combined references do not teach the pump being disposed in a second space formed between the housing and the first spring. '092 Fig. 7 shows the location of the pump between the spring and housing mechanism as outlined in the previous rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey O'Brien whose telephone number is (571)270-3655. The examiner can normally be reached on Monday through Friday 8:00am-5:30pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Victor Batson/  
Supervisory Patent Examiner, Art Unit 3677

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